

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 00-1924; Submitted on the Record;
Issued February 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment in the amount of \$4,135.18 was created; and (2) whether the Office properly found that appellant was with fault in the creation of the overpayment, thus precluding waiver of recovery of the overpayment.

On June 23, 1986 appellant, then a 48-year-old mail carrier, filed a traumatic injury claim alleging that on that date she hurt her right knee when she slipped and fell.

By letter dated November 17, 1992, the Office accepted appellant's claim for a contusion of the right knee, chondromalacia of the right knee patella, temporary aggravation of the lateral tracking of the patella and consequential bilateral sprained ankles.

Appellant received compensation for periods of employment-related disability.

On October 30, 1997 Dr. Stephen Barnes, a Board-certified orthopedic surgeon and appellant's treating physician, released appellant to return to work in a light-duty job for eight hours per day, two days per week. Appellant returned to work at the employing establishment in the limited-duty position of modified part-time flexible distribution clerk on October 25, 1997. On December 30, 1997 Dr. Barnes released appellant to work full time in the limited-duty position. Appellant began working in that position on a full-time basis on that date.

In an April 15, 1999 letter, the Office made a preliminary determination that an overpayment had occurred in the amount of \$4,135.18 because appellant continued to receive compensation for temporary total disability when she returned to part-time work on October 25, 1997 and full-time work on December 30, 1997. The Office advised appellant that she was at fault in the creation of the overpayment. The Office advised appellant that she could request a telephone conference, a final decision based on the written evidence only or a hearing within 30 days if she disagreed that the overpayment occurred, if she disagreed with the amount of the overpayment, if she believed that the overpayment occurred through no fault of her own or that

recovery of the overpayment should be waived. The Office requested that appellant complete an accompanying overpayment recovery questionnaire and submit financial documents in support.

On May 14, 1999 appellant requested a prerecoupment hearing.

By decision dated February 11, 2000, the hearing representative finalized the Office's preliminary overpayment determination and finding of fault.

The Board finds that the Office properly determined that an overpayment in the amount of \$4,135.18 was created.

In this case, the record reveals that the Office issued compensation checks dated November 8 and December 6, 1997, and January 3 and 31, 1998 covering periods of temporary total disability from October 12, 1997 through January 31, 1998. The record further reveals that appellant was working for the employing establishment in a limited-duty position during the period in question. Appellant testified at the hearing that she deposited the compensation checks because she was having difficulty in working, she missed a lot of time from work and she needed the money to pay her living expenses. Thus, the record clearly reflects that an overpayment was created in the amount of \$4,135.18.

The Board also finds that the Office properly found that appellant was with fault in the creation of the overpayment.

Section 8129(a) of the Federal Employees Compensation Act provides that where an overpayment of compensation has been made "because of an error of fact or law," adjustment shall be made by decreasing later payments to which an individual is entitled.¹ The only exception to this requirement is a situation which meets the test set forth as follows in section 8129(b): "[a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience."² Thus, the Office may not waive the overpayment of compensation in this case unless appellant was without fault.³

In evaluation of whether appellant is without fault, the Office will consider whether appellant's receipt of the overpayment occurred because she relied on misinformation given by an official source within the Office or another government agency which appellant had reason to believe was connected with administration of benefits as to the interpretation of the Act or applicable regulations.⁴

¹ 5 U.S.C. § 8129.

² 5 U.S.C. § 8129(b).

³ *Harold W. Steele*, 38 ECAB 245 (1986).

⁴ 20 C.F.R. § 10.435(b)(1) (January 1999).

In determining whether an individual is at fault, section 10.433(a) of the Code of Federal Regulations provides in relevant part:

“An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to furnish information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have been expected to know was incorrect.”⁵

In this case, the Office applied the third standard, that appellant accepted a payment, which she knew or should have been expected to know was incorrect. The evidence of record reflects that although appellant worked at her limited-duty job beginning October 25, 1997, she was paid compensation for temporary total disability for the period October 12, 1997 through January 31, 1998. The record also reflects that appellant deposited the compensation checks covering the period in question. Although appellant testified at the hearing that it was not until some time in 1999 that the Office advised her that she was not entitled to the compensation payments she received after she returned to work in October 1997, the record contains the Office’s April 28, 1997 letter advising her that she would receive a compensation check every four weeks and the reduction of her compensation if she subsequently was only partially disabled and able to work. Further, the Office’s letter provided:

“9. OVERPAYMENT. To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. Each payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised the OWCP that you are working.”

Based on this information and the receipt of compensation payments, appellant should have been expected to know that she was not entitled to the compensation checks.

The Board notes that it does not have jurisdiction to review the Office’s finding regarding repayment of the overpayment. The Board’s jurisdiction is limited to reviewing those cases where the Office seeks recovery from continuing compensation under the Act.⁶ As appellant is no longer receiving wage-loss compensation benefits,⁷ the Board does not have jurisdiction with respect to the Office’s recovery of the overpayment under the Debt Collection Act.⁸

⁵ 20 C.F.R. § 10.433(a) (January 1999).

⁶ *Levon H. Knight*, 40 ECAB 658 (1989).

⁷ Appellant testified at the hearing that she is no longer receiving compensation from the Office.

⁸ 5 U.S.C. § 5511 *et seq.*

The February 11, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 25, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member